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CHARLES ELMORE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1932

No. 412

LOS ANGELES GAS AND ELECTRIC CORPORATION (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,

Respondents.

STATEMENT AS TO JURISDICTION ON APPEAL.

HERMAN PHLEGER,
PAUL OVERTON,
MAURICE E. HARRISON,
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Crocker Building, San Francisco, California,
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STATEMENT AS TO JURISDICTION ON APPEAL.

The appellant, pursuant to Rule 12 of the Supreme Court of the United States, as it stood on June 2, 1932, the date upon which the appeal herein was allowed, files its statement of the basis on which it is contended this Court has jurisdiction to review on appeal the final decree of the United States District Court, Southern District of California, Central Division, and respectfully represents:

A. STATUTORY PROVISIONS SUSTAINING JURISDICTION:

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938 (United States Code, Title 28, Section 345), provides that Section 238 of the Judicial Code is amended to read in part as follows:

> "Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
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> • • • • • • •
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> (3) An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, 'The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.' "

B. DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was made on the 3rd day of May, 1932 (R. 278, 279).*

The application for appeal was presented on the 2nd day of June, 1932 (R. 301) and was allowed on the 2nd day of June, 1932 (R. 302, 303).

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*All references to the record are to pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of the Court. The record has not yet been printed.

C. NATURE OF THE CASE AND RULING BELOW.

This suit was instituted for the purpose of enjoining the enforcement of an order of the Railroad Commission of the State of California (R. 31-104), which prescribed maximum rates to be charged by appellant for the distribution of gas as a public utility, which rates so prescribed were a reduction of 9% under the rates prescribed by said Commission on November 13, 1928 (R. 68). As appears from the bill of complaint herein (R. 4-124), the reduced rates so prescribed would yield to appellant a net revenue less than a fair return on the fair value of its property devoted to the public service, and the enforcement of the order of the Commission will deprive appellant of its property and the use thereof without due process of law, deny to appellant the equal protection of the laws and take appellant's property and the use thereof for public use without just compensation, all in violation of the Fourteenth Amendment to the Constitution of the United States (R. 14).

An interlocutory injunction was asked by the bill of complaint (R. 27), and after due hearing by the Court, constituted of three judges as required by law, such interlocutory injunction was granted (R. 147-149). The case was duly submitted to the specially constituted Court, which, after hearing on the merits, made and entered its decree dismissing the bill of complaint, finding that said rates are not confiscatory and finding the decision and order of the Commission not unlawful, as alleged. It is from that decree that this appeal is taken. This decree is a final judgment and decree in a proceeding of the kind specified in the Act of February 13, 1925, 43 Stats. 936, 939 (28 U. S. Code, Section 345), set forth

in subdivision A hereof, under which an appeal lies directly to this Court, and no other Court has jurisdiction of such appeal.

D. CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Stratton v. St. Louis Southwestern R. Co., 282 U. S. 10;

Herkness v. Irion, 278 U. S. 92;

Clark v. Poor, 274 U. S. 554;

Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 196.

It is respectfully submitted that this Court has jurisdiction of this appeal by virtue of Section 238 of the Judicial Code, as amended February 13, 1925.

Dated, San Francisco, California,
October 10, 1932.

Respectfully submitted,
HERMAN PHLEGER,
PAUL OVERTON,
MAURICE E. HARRISON,
JAMES S. MOORE, JR.,
Counsel for Appellant.